In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1774

CARL C. ANDERSON, SR. AND MARIE J. ANDERSON,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The United States condemned certain of petitioners' land for use in rechanneling a portion of the Colorado River in Imperial County, California (Pet. 3). The ownership of most of the land was not in dispute, but petitioners claimed ownership of some 25.6 acres which the government claimed already to own (see Pet. 4). The basis of petitioners' claim was that their principal tract was riparian at the time their ancestor in title made his homestead entry, and that the disputed land had become part of it through accretion.

The district court found that regardless of whether the land was riparian at the time of entry (which was disputed) it was not riparian at the time the patent was issued to petitioners' ancestor, and that the patent and survey on which the patent was based show it as non-

riparian (Pet. App. B pp. vi-vii).[1] The court concluded that the patent was controlling and that the land in dispute belongs to the United States (Pet. App. A). The court of appeals affirmed, holding that the extent of ownership was controlled by the patent (Pet. App. B).

The decision of the court of appeals is correct and presents no conflict with decisions of other courts of appeals nor any question warranting review by this Court. The court relied on its previous decision in *United States* v. *62.57 Acres of Land in Yuma County, Ariz.*, 449 F. 2d 5 (C.A. 9), which held that insofar as the patent agrees with the survey (the situation here) the land's boundaries are fixed at the time of patent, not entry. That decision, and the present decision, are consistent with this Court's rule that the extent of a grant is controlled by the patent finally issued, rather than by the land entered. *Dominquez De Guyer* v. *Banning*, 167 U.S. 723, 743.

The cases cited by petitioners are not in conflict with this holding. Rights to alluvion accrue only to riparian owners, and the patent upon which petitioners' title is based shows that they were not riparian owners.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

WALLACE H. JOHNSON,
Assistant Attorney General.

JACQUES B. GELIN,
EVA R. DATZ,
Attorneys.

JULY 1974.

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[1]We are lodging with the Clerk a copy of the relevant findings of fact and conclusions of law.